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Subject: Microsoft Settlement.

My comments are in the attached PDF

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Microsoft Settlement

I have read the REVISED PROPOSED FINAL JUDGMENT and the COMPETITIVE IMPACT STATEMENT and it is my opinion in general that the proposed settlement does not:

1. Provide sufficient relief to consumers for the damage they have suffered as a result of MicroSoft's illegal actions.
2. Provide adequate measures to properly restrain MicroSoft from future illegal actions
3. Provide sufficient measures to ensure competition in the future.
4. Provide adequate measures to ensure MicroSoft's compliance with the Judgment.

More specifically:

I All customers that choose to use non-MicroSoft products are damaged every day by their methods of attempted market monopolization. The best example of this is the World Wide Web. Although the case focused on MicroSoft's attempts to put NetScape out of business and their actions in coercing Apple Computer to use the Internet Explorer browser, I do not think that these were the ultimate purpose – these were not ends in themselves. MicroSoft's intent appears to be the ultimate control of web content production and distribution (servers).

Their method is simple: MicroSoft web content production software and their web server software – most specifically the so called ' Active Server Page [ASP] and the IIS web server – produce HTML code that is not compliant with the W3C standards. This would be a very poor market strategy for any company that did not hold a virtual monopoly. However, for a monopolist it appears to work.

On IBM PC compatible computers there are still several web browsers available, but if you use one of them you keep running into web pages that don't work correctly. I have submitted some of these to the W3C's validation program (at their web site) and they have numerous errors in them. But, I assume, that they work correctly on MS IE. So, their software produces non-standards compliant web pages that only work on MS IE.

There is no possible business rational for this strategy. It would not work for a small company! If a small company introduced such software that required users to use their web browser, they would quickly go out of business. But, with a monopoly and their web browser available free, this tends to encourage people to use their web browser on Windows. After

all, it is available free or it came with the computer. People try MS IE, and it works so they keep using it.

The only major barrier to this strategy was Apple Computer and evidence at the trial indicated how they coerced Apple Computer into switching to MS IE. So, with makers of standards compliant browsers almost completely shut out of the market, MS is now free to set the standards for web content.

I should point out how difficult it is for another company to make a new browser. The MS IE browser is standards compliant – it will work with standards compliant web pages, but it will also display the non-compliant web pages produced by MS software. Mr. Gates has stated that IE is the most compliant browser available. Quite true since it not only displays standards compliant HTML but also MS generated HTML. But, how is any other company going to accomplish this. MS has no printed standards for their version of HTML. It is basically impossible. And, even if some succeeded, MS could just make changes to their secret 'standard' and simply tell users to download the latest version of IE.

I do not believe that disclosure as outlined in the Settlement would cure this problem since it really appears that it is a question of MS IE being very tolerant of mistakes in a way that could not be stated in a standard. However, there is a very simple solution to this problem. MicroSoft must be required to, after a set date, guarantee that all web content produced by their software will be 100% compliant with the current W3C standards for HTML and CSS.

This would create a bright line, the W3C validation programs already exist and it is a clear binary question – either a page passes or it doesn't. There would be no arguing over whether or not some disclosure met the requirements of the Settlement.

I note that if this were the case, that MS software produced fully W3C compliant web content that the questions of the free distribution of the browser and their attempts to put NetScape out of business become much less relevant because their ultimate ends could not be achieved.

II The Impact Statement states that the Settlement will benefit consumers by:

Ensuring that software and hardware developers are free to develop, distribute, or write to software that competes with Microsoft middleware or operating system software without adverse action by Microsoft, by prohibiting Microsoft from retaliating against developers or conditioning consideration on a developer refraining from developing, distributing or writing to software that competes with Microsoft platform software.

I do not believe that the prevention of retaliation is sufficient to achieve this goal. I emphasize here the development of operating system software. The Statement concentrates on "middleware". However, disclosure of the technical details of middleware is not sufficient to ensure competition in operating system software in all respects. While it will have some positive effects on server software, it will have little or no effect on desktop operating system competition.

For there to be competition in the desktop operating system market, the Settlement must

achieve at least some of the results which would have resulted from the break up of MS. In this context, a major defect in the Settlement is that the required disclosure of APIs and other information is:

for the sole purpose of interoperating with a Windows Operating System Product[.]

First, this would appear to contradict the section from the Statement quoted above, and, certainly could be used to prevent the disclosure of such information for the purpose of writing software to compete with MS operating system software.

The common wisdom is that what is now holding other operating systems back – preventing effective competition with MS – on the IBM PC type personal computer is not Windows, but rather it is the MS Office Suite. For a Settlement to provide the needed relief to consumers, it must address this point.

I also note that I believe that these limiting conditions on disclosure will lead to constant wrangling over what must be disclosed to who and further legal action. What is needed is full disclosure of the API without conditions. Specifically that it be made available for the purpose of producing competing operating systems.

There also needs to be a bright line, as stated above in regard to web browsers. The reasons for this should be clear to anyone familiar with the case. MicroSoft have shown themselves to be devious and egregious liars. Experience with the previous case about the web browser issue have clearly shown that MS will not act in good faith.

The best way to deal with the disclosure issue is with a standard. Therefore, I recommend that MS be required to submit the Windows API to an IEEE standards making committee and that a published standard be produced within a set time at MS's expense.. And after the publishing of the standard that MS be required to contract with two independent software and testing companies to produce the software necessary to test both the Windows operating system and the Office Suite for compliance with the standard. This software should be generally available for a reasonable fee to cover the costs of materials and distribution only. After a reasonable time, MS should be prohibited from selling any version of Windows or the Office Suite that does not comply with the published standards as determined by the two independent software and testing companies.

Alternately, they could be allowed to convert to fully POSIX compatible software and stop selling software that uses the current Windows API.

The same standards making should also be applied to the client/server and middleware issues.

III It has been conjectured that if MS was broken up, that the application company would make the Office Suite available for other IBM PC operating systems. This is not totally certain, but we can be sure of the pattern of selectively offering the MS IE explorer for various platforms. It is available for Windows and the Mac OS. A little known fact is that it is also available for UNIX. Specifically, it is (or was) available for Solaris and HP-UX. The Solaris was available for Sparc only – the UNIX version is not available for UNIX running

on Intel x86 processors. This is not a rational business decision since the demand for these versions is considerably less than it would be for Linux and BSD running on Intel processor systems. It should be clear that their objective is to push the Windows monopoly in preference to promoting the use of their browser.

I would, therefore, recommend that MS be required to make the Office Suite available for Linux and Solaris (both Sparc and Intel processors). To ensure competition and compliance in the case of Linux (and because this appears to be possible) I would recommend that they be required to provide two versions. One (for Linux) independently ported and sold by CodeWeavers with a usual and customary royalty arrangement. And the other (for Linux and Solaris) a MS version ported with the aid of their current Windows to Unix porting software as available from MainSoft or their own WISE software. MicroSoft to pay all development costs.

IV I believe that MS should be in some way penalized for their illegal conduct and the damage done to consumers over the past 10 or so years, that they should be fined. I would suggest that instead of a fine that they be allowed to donate One Billion Dollars to the Free Software Foundation. This would be a charitable contribution since the FF is 501 (c) (3).

This would also promote competition in the personal computer market. This may sound odd, but since it has been much more difficult for MS to retaliate against the open software community, many (including myself) believe that the best chance for competition with MS software (in the near future) is the open source movement.

V The greatest harm to me as a consumer has been the Novel, WordPerfect, UnixWare fiasco. I presume that you are aware of the fact the Novel purchased WordPerfect (and Quattro Pro) and UnixWare with the intention of offering an office suite not only for Windows but for UNIX as well. It is my understanding from what I have read in the IT trade press that MS coerced Novel with the threat that they would make the next version of Windows totally incompatible with Novel Netware. As a result, Novel sold WordPerfect to Corel Corporation and UnixWare to SCO.

Corel is now slowly getting out of the WordPerfect business and slowly their business continues to decline. SCO was only interested in the OS and had their own fight with MS about that. UnixWare was then sold to Caldera.

As I remember, this also spelled the end of the OpenDoc project which would have greatly increased competition in the office suite market by promoting an open document format. The result of this is that I (and all consumers) can NOT purchase the WordPerfect Office Suite for UNIX (Linux, BSD, Solaris, etc.). Something must be done to redress this.

I don't know what the best way to redress this would be. It would clearly depend on whether the successors in interest to Novel were interested in doing anything about it. What is certain is that MS should provide the finances.

A possible suggestion is that a joint venture be formed to develop WordPerfect Office Suite for UNIX (including UnixWare, Solaris and Linux). For example, Novel, Caldera, and Corel could form a corporation to do this, each buying in with \$100 Million in stock (stock swap)

and MS would be required to buy in with \$1 Billion in stock but MS would receive non-voting shares. The corporation could then sell the MS stock as needed to finance their operations. There are many other methods and permutations that would server as well -- including some form of non-commercial only open source.

But, something must be done to address this point because without real competition to MS Office Suite, there will never be real competition in the desktop operating system market.

NOTE: I note in closing that some of my suggestions will require MicroSoft to invest money in new business ventures. In the case of WordPerfect, this is somewhat punitive, but in the case of porting MS Office Suite to other platforms, I believe that this is in the best interest of the company and that they have not done so not for rational business reasons but for reasons of monopoly maintenance. In both cases, they might make money on the deal. The 9 dissenting states have demanded the MS Office Suite be ported but they have gone too far in requiring that MS not earn royalties on its sale.

The issue of whether various actions by MS are rational business decisions or done for the sake of monopoly maintenance is probably the most important issue in the case. I feel that it is on this basis that the success of any settlement should be judged. If they continue to make marketing decisions based on monopoly maintenance, then the settlement will have failed.

James Richard Tyrer